

Situation: A Special Service District (SSD) is the holder of a right-of-way grant (lease) for a communication site which is located on and authorized by the Bureau of Land Management. The lease covers 20 acres and was the first authorization at this site. The original communication uses were for TV & FM translators. A recent use inventory sheet indicated nine TV translators, five FM translators, and six PMRS uses.

In 2001, a wireless carrier constructed facilities (building/tower) within the surface area of SSD's lease. These facilities are owned by the wireless carrier and not by the SSD.

In 2001, another ROW grant was issued to a REA utility for a microwave facility (building/tower). Use inventory sheets for 2001 indicated the owner's use as microwave, with one PMRS tenant use (BLM). Both uses are rent exempt.

BLM is currently in the process of developing a communication site management plan which will address current and future management of this site.

Q-1 Because the SSD's ROW authorization covers the entire area (20 acres), can SSD be the site manager and charge for all other users that locate within the area covered by their grant?

A. No, the current grant to SSD does not provide authorization for SSD to act as the site manager. BLM retained the right to require common use of the right-of-way, and the right to authorize use of the ROW for compatible uses (including the sub-surface and air space) (43 CFR 2801.1-1(a)(2)). SSD, as a facility owner, can sublease space in their facilities to other tenants/customers and charge a reasonable rate for that use. Such tenants/customers do not need any additional authorization from BLM.

Q-2 Does the wireless carrier that constructed their own facilities within the ROW area authorized to SSD need a separate authorization from BLM?

A. Yes. Owners of communication facilities (towers/buildings) (see definitions) must have their own authorization from BLM. In this case, if SSD had built and owned the facilities that the wireless carrier constructed, then the wireless carrier would not have to obtain a separate authorization from BLM. SSD would have to report that use on their inventory sheet, and would be charged the scheduled rate for a cellular use. Since the wireless carrier owns the tower/building, they must have a BLM lease and are subject to rent. SSD is not entitled to any land rent from the wireless carrier for siting within their original right-of-way area. If SSD or any other holder is providing any other services (such as electrical or telephone service), then they can charge a reasonable rate for those services.

Q-3 Can SSD be designated the site manager for future uses that might co-locate on the site?

Yes, if so designated in the communication site management plan. As a site manager, SSD would have to provide and own the infrastructure (towers and equipment shelters (buildings) for all future users to locate at the site. SSD would have to submit annual inventory sheets, certifying the uses that are co-located within their facilities. If the existing authorization holders agree to relinquish their leases and transfer ownership of their facilities to the site manager, all uses could be managed by the “site manager”.

Q-4 If no site manager is designated in the management plan, how will future uses be authorized.

Any future use that colocates within existing and authorized facilities, would not need further approval from the BLM, as long as that use is consistent with any site management plan that might be in place. However, these uses must be reported annually by the lease holders and may be subject to rent. Future users that wish to own and construct new facilities (tower and/or building) **must** obtain a lease from BLM prior to any surface disturbance activities and may be subject to rent.

Q-5 Can the users form a “User Association” to facilitate management of the site?

Yes. If the users and the BLM agree (and if such action is consistent with the site management plan), a “User Association” can be formed to facilitate management of the site. All existing users and future users would have to become members of the Association and be subject to the bylaws of the Association. The Association must be formed in accordance with the legal requirements for an “Association” of whichever state the site is located.

Q-6 Can a “User Association” hold the lease for all uses at a communication site?

Yes. However, existing authorization holders would have to relinquish their leases and all users would have to become members of the Association and be subject to the rules of the Association. The bylaws would have to be specific that the Association controls all activities at the site and that each member assumes liability for the actions of all other members. Ownership of the facilities (buildings and towers, etc.) could remain with individual users, but only if they agree to be subject to the rules/bylaws and operating procedures of the Association. The Association would submit annual user inventory sheets to the BLM, and BLM would bill the Association for any rent which might be due.